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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

SEP - 6 1994

FEDERAL COMMUNICATIONS COMMISSION
DEPT. OF SECRETARY

In the Matter of)
)
Revision of Part 2 of the)
Commission's Rules relating to)
the marketing and authorization)
of radio frequency devices)

ET Docket 94-45

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COMMENTS OF
AMSC SUBSIDIARY CORPORATION

AMSC Subsidiary Corporation ("AMSC") hereby submits its comments in support of the new marketing rules for radio frequency ("RF") devices proposed by the Commission in its Notice of Proposed Rule Making ("NPRM") in the above-referenced proceeding.^{1/} The new rules will clarify the existing ambiguity in the rules and facilitate the marketing of new technologies and services -- all without increasing the risk of unwarranted harmful interference.

Current rules ban the marketing or operation of RF devices until they comply with all applicable technical and administrative requirements (the latter being grant of an equipment authorization or completion of a self-testing "verification process"). Toshiba Corporation, 57 RR 2d 1619 (1985). Section 2.803 prohibits a sale, lease, or advertisement or offer for sale or lease of any RF device that requires an FCC grant until such FCC grant. The rules, however, permit limited

^{1/} 59 Fed. Reg. 31966 (1994).

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pre-grant advertisement or display of an RF device if the advertisement or display contains a "conspicuous notice" as follows:

This device has not been approved by the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased until the approval of the FCC has been obtained.

Section 2.805 governs the advertising and display of RF equipment outside the scope of Section 2.803.2/ Like Section 2.803, Section 2.805 broadly restricts the display and advertisement of RF equipment. But unlike Section 2.803, Section 2.805 lacks a "conspicuous notice" proviso that permits certain publicity about or display of equipment not subject to equipment authorization. This creates some ambiguity as to the applicability of the "conspicuous notice" provision to the marketing of equipment that is governed by Section 2.805.

Equipment with a more severe risk of interference to licensed communications generally requires an FCC grant of equipment authorization; gear less prone to cause interference is subject to the self-testing verification process. However, under current rules, equipment with lower interference potential is actually subject to greater marketing restrictions. The NPRM proposes to rectify this paradox by harmonizing the rules for all classes of equipment. All equipment could be advertised and displayed under the revised marketing provisions.

2/ Other portions of Part 2, Subpart I, contain special provisions about the marketing of such RF devices as ISM (Part 18) equipment and Broadcast (Part 73) transmitters.

The FCC has authorized AMSC to construct, launch and operate the domestic MSS system.^{3/} AMSC's subscribers will use L-band spectrum to communicate in the fifty States, Puerto Rico, the U.S. Virgin Islands, and within 200 miles of the U.S. coast. Those living in or passing through rural and remote areas beyond the range of terrestrial communications services (e.g., cellular telephone systems) will finally enjoy mobile communications. For this reason, the FCC has repeatedly acknowledged the pressing need for MSS. See, e.g., AMSC Authorization Order, supra; Second Report and Order, 2 FCC Rcd 485 (1987). AMSC's expeditious start of such service will lay the foundation for the ultimate success of the MSS industry, and will fulfill AMSC's FCC authorization.

AMSC's MSS system will initially comprise: a geosynchronous satellite; a Network Operations Center; a feeder-link earth station; and numerous (ultimately hundreds of thousands of) mobile earth terminals installed in subscribers' cars, trucks, buses, railroad cars, boats, etc.^{4/} There will be various types of mobile terminals. Some will function only in the L band and only for MSS data or voice communications. Others will

^{3/} See Memorandum Opinion, Order and Authorization ("AMSC Authorization Order"), 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992); aff'd sub nom. Aeronautical Radio, Inc. v. FCC, 983 F.2d 275 (D.C. Cir. 1993).

^{4/} Construction of the MSS system is well underway, with launch of the first satellite scheduled for early 1995. In addition, AMSC has applications pending before the Commission to construct and operate the feeder-link earth station (File No. 445-DSE-P/L-93) and to operate up to 200,000 mobile terminals (File No. 2823-DSE-P/L-93).

combine an L-band MSS transceiver and a conventional UHF cellular telephone in one "dual-mode" package.^{5/} Single-mode mobile terminals are subject to a blanket license, not the more conventional form of equipment authorization (i.e., type acceptance).^{6/} Dual-mode units will be subject to both a blanket license and, for their cellular-telephone sections, type acceptance. As such, AMSC anticipates that its mobile terminals are subject to Section 2.805 of the current rules.

As the NPRM aptly observes, the provisions of Section 2.803, which permit the display and advertising prior to any needed FCC grant of equipment authorization, should apply to all classes of FCC devices. Moreover, a manufacturer or vendor should be permitted to operate any RF device for the purposes of compliance testing, demonstration at a trade show, or product evaluation at a manufacturer's, wholesaler's, or retailer's facilities, so long as (except for unique devices) delivery to the ultimate customer does not take place until the verification process is complete or the FCC has granted an equipment authorization. Such a change in the rules will eliminate an arbitrary distinction codified in the rules which appears to have no real purpose.

The change will enable AMSC to publicize the mobile terminals that will ultimately be available to subscribers and to sign up customers on an early-subscriber basis (possibly with

^{5/} Users will select from between the two operating modes as they move in or out of terrestrial-system service areas.

^{6/} As such, mobile terminals would be subject to § 2.805 of the current rules.

vouchers for future discounts on equipment) without running afoul of FCC regulations. Such marketing flexibility will pose no risk of interference to licensed communications services, but will enable AMSC to buttress the likelihood of success of its enormous undertaking. That will clearly serve the public interest.

Finally, AMSC also supports the other "housekeeping" rule changes the Commission has proposed, such as codification of the documentation requirements for devices subject to verification.

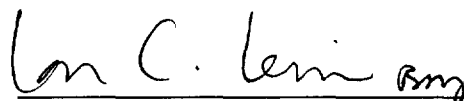
For the reasons set forth above, AMSC urges the adoption of a Report and Order consistent with the NPRM and these Comments.

Respectfully submitted,

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